

**MINUTES OF THE
POLITICAL SUBDIVISIONS INTERIM COMMITTEE**
Wednesday, September 19, 2012 – 2:00 p.m. – Room 450 State Capitol

Members Present:

Senate Chair Casey O. Anderson
House Chair R. Curt Webb
Sen. Scott K. Jenkins
Sen. Karen Mayne
Rep. David G. Butterfield
Rep. Jack R. Draxler
Rep. Rebecca P. Edwards
Rep. Jeremy A. Peterson
Rep. Keven J. Stratton
Rep. Mark A. Wheatley

Members Absent:

Rep. Stewart Barlow
Rep. Brian S. King

Staff Present:

Mr. Joseph Wade, Policy Analyst
Ms. Victoria Ashby, Associate General Counsel
Ms. Samantha Coombs, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Anderson called the meeting to order at 2:33 p.m. Rep. Barlow was excused from the meeting.

MOTION: Sen. Jenkins moved to approve the minutes of the August 15, 2012, meeting. The motion passed unanimously.

2. Sovereign Citizen Liens

Rep. Greenwood described the growing problem of sovereign citizens filing fraudulent liens, particularly those targeting public officials. He explained that after review of Utah Code Annotated Section 76-6-503.5, by the Office of Legislative Research and General Counsel, it was determined that the solution to the problem was already in the code, but that it was not being enforced. Rather than add new language, discussions were held with the Attorney General's office where it was agreed that efforts would be made to increase the enforcement of the current statute.

3. County Recorder Authority to Reject a Wrongful Lien

Rep. Webb explained that after many discussions, it was being recommended to leave Utah Code Annotated Section 38-9-3 the way it currently stands, which allows a recorder to reject a wrongful lien at the risk of rejecting a legitimate document. Other proposed changes would be made to the definitions portion of the code to add documents that should be considered as wrongful liens, e.g., "wrongful lien releases." The proposed changes were going to be added to draft legislation for future committee consideration.

Mr. Randy Simmons, President, Utah Association of County Recorders, Uintah County Recorder, agreed with Rep. Webb that it was important that the recorders immediately notify the prosecutor's office upon filing of a fraudulent lien, which will aid in the enforcement of the code. Mr. Simmons indicated that the Utah Association of County Recorders was going to notify the recorders to make them aware of this best practices procedure.

Ms. Debra Ames, Co-Chair Legislative Committee, Utah Association of County Recorders, Rich County Recorder, thanked Rep. Webb for his work with the recorders to come to a conclusion to address the sovereign citizens and wrongful liens issue.

4. Utah Telecommunication Open Infrastructure Agency (UTOPIA) Audit

Mr. James Behunin, Audit Supervisor, Office of the Legislative Auditor General (OLAG), presented the UTOPIA audit, which examined how a \$185 million bond issued by UTOPIA was spent. The presentation included a synopsis of the failure of UTOPIA to meet its goals, insufficient revenue to cover expenses, and the genesis of UTOPIA's financial problems, and also listed recommendations proposed to address its challenges.

Rep. Butterfield inquired about UTOPIA's strategy to complete the building of the fiber-optics network, as well as the genesis of the document referred to in the audit "UIA Five-Year Plan: Executive Summary."

Mr. Behunin responded that UTOPIA has a strategy but does not have a written document outlining the development plan. Mr. Behunin explained that one of the recommendations from the audit suggested that the agency develop a written document outlining the development plan that could be presented to interested parties as well as hold individuals accountable for UTOPIA's progress or failure. He explained that the origins of the Executive Summary document were unknown.

Sen. Mayne asked if UTOPIA had previously been audited by OLAG and if UTOPIA had the financial structure to sustain the program long-term.

Mr. Rick D. Coleman, Deputy Auditor General, OLAG, explained that UTOPIA has been financially audited, but the performance audit presented to the committee was the first audit conducted by OLAG on the agency. He clarified that the auditors did not look at the possible future ramifications of decisions made by the agency moving forward, but how the agency spent the \$185 million bond and past decisions.

Rep. Stratton asked if UTOPIA was in compliance with the Open and Public Meetings Act, Utah Code Annotated Section 52-4, and asked for clarification why the auditors would recommend that UTOPIA comply with the act when the agency claims it already is in compliance.

Mr. Behunin responded that UTOPIA expressed concern that opening up the executive committee meetings to the public would divulge information that would benefit its competitors. He explained there was a difference of opinion between Legislative Counsel and UTOPIA as to whether the executive committee was in compliance with the act.

Sen. Jenkins inquired whether there was any evidence that UTOPIA would be able to solve its problems and succeed. He asked if the cities had contacted the auditors to express concerns about UTOPIA's ability to confront its challenges.

Mr. Behunin explained that the auditors contacted the cities to conduct interviews and review information.

Mr. John Schaff, Auditor General, OLAG, emphasized that the auditors review the past, make recommendations, and do not make projections for UTOPIA's future other than acknowledging concerns.

Rep. Peterson expressed concern that UTOPIA debt proceeds were being used to cover the debt service.

Mr. Alex Jensen, Layton City Manager, board member, Utah Infrastructure Agency, responded to the audit. He acknowledged that UTOPIA had struggles and made numerous mistakes in the past, but assured the committee that the member cities were able to meet their financial obligations and that the cities agreed it was better to move forward than to stop operations. He explained that the members of the board came to respond to the audit and not to present the agency's five-year development plan. He invited the committee to meet with the board

members to discuss and review the plan in a different setting.

Rep. Webb expressed concern about UTOPIA's inability to acquire a sufficient number of subscribers and reach its projected take rates. He asked for clarification regarding the marketing efforts by UTOPIA and if private contractors control the take rate.

Mr. Kane Loader, Midvale City Manager, board chairman, UTOPIA, and Mr. Jensen explained that the marketing was conducted by the private service providers who also control the take rate. They expressed a difference of opinion on the methodology used by the auditors to calculate the take rate. Additionally, it was explained that UTOPIA was a wholesale model and not a retail model, which proved to be a difficult model because of the limitations it imposed on the agency.

Rep. Butterfield emphasized the need for an exit strategy and liquidation plan to be included as part of the agency's overall strategy.

The committee further inquired into and expressed concerns about the projected cost to complete the network, take rates, key performance indicators to measure progress, and compliance with the Open and Public Meetings Act.

Rep. Draxler asked about the options available to the Legislature regarding the options the state has or does not have in regards to UTOPIA.

Ms. Ashby explained that there were a spectrum of options. The Legislature could do nothing and allow the cities to handle the issue. The Legislature could choose to reinforce and clarify the statutes that were cited in the audit. On the far end of the spectrum, the Legislature could choose to get involved in the agency's business practices, but that option increases the likelihood for litigation. Ms. Ashby clarified that the state is not liable for the contracts and bonds entered into by the cities.

5. Other Items / Adjourn

MOTION: Rep. Stratton moved to adjourn the meeting. The motion passed unanimously. Sen. Jenkins was absent for the vote.

Chair Anderson adjourned the meeting at 4:35 p.m.